



PACA Pulse

WINTER 2012

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

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Spaceport America Update

By Bill Dettmer, PACA Spaceport Authority Liaison

Spaceport America has been providing commercial launch services since 2006. The latest launch by Armadillo Aerospace occurred Saturday, January 28, 2012 within

Experience for students, tourists, and space launch customers; the vertical launch complex improvements; and the paving of the southern road to the Spaceport. When



the allotted launch window at approximately 11:15 local. The launch appeared to be flawless, and preliminary indications are that the vehicle achieved the desired altitude. Unfortunately, the recovery system did not function as intended, and the vehicle made a very hard landing well within the planned safety zone.

Phase I of the construction of the Spaceport is expected to be complete in early 2012. Phase II of the construction and pre-operations activities will follow, including the development of a world-class Visitor

Phase II construction is completed in 2013, Spaceport America will become fully operational.

Spaceport America staff has been working closely with entrepreneurial space leaders, such as UP Aerospace, Virgin Galactic, and Armadillo Aerospace, as well as established aerospace firms like Lockheed Martin, Boeing, and MOOG-FTS to develop commercial spaceflight at the new facility. The economic impact of launches, tourism, and new construction at Spaceport America are already being realized.

The New Mexico Spaceport Authority Board of Directors recently reviewed plans to design, build, and program the Spaceport America Visitor Experience. The plan includes two off-site Welcome Centers located in the Village of Hatch in Doña Ana County and in Truth or Consequences in Sierra County, plus an on-site Visitors' Center and specially developed behind-the-scenes tours as well as the chance to visit the Virgin Galactic Gateway to Space.

PACA has been following the development of Spaceport America since the Southwest Space Task Force was formed in 1992. New Mexico should be proud to host "the world's first purpose-built commercial spaceport." •

**Armadillo
Aerospace's
STIG-A III
Rocket
launches
successfully
from
Spaceport
America.**



Upcoming Luncheon Speakers

■ March 20 - Colonel Carol P. Welsch, Commander of the Space Development and Test Directorate



Col. Welsch arrived at Kirtland AFB from Los Angeles AFB where she served as the Director of Engineering, Space Superiority Systems Wing (SYSW), Space and Missile Systems Center. As the SYSW Director of Engineering, she was responsible for systems engineering, technology development, and development planning of a \$4 billion space control enterprise

including space situational awareness and counterspace systems.

Col. Welsch graduated from Rensselaer Polytechnic Institute in 1988 with a Bachelor of Science in aeronautical engineering. She completed Rensselaer's Air Force ROTC program as a distinguished graduate. Her career includes a diverse set of assignments as an engineer in the space acquisition, space operations, cruise missile flight test, and strategic intelligence fields.

Col. Welsch temporarily left engineering to serve as an Air Force Legislative Fellow to the Office of Senator Wayne Allard. As a member of Senator Allard's staff, she was responsible for all homeland security issues and assisted on military and space legislative issues. She followed this fellowship with assignments to the Air Staff Directorate of Space Operations and the Office of Legislative Liaison, where she served as the Secretary of the Air Force's focal point for all Air Force space legislative issues.

A graduate of the Air War College at Maxwell AFB in Alabama, Col. Welsch previously served as the Director of the Space Development Group.

■ April 17 - Casey DeRaad, Chief of Technology Outreach for the Air Force Research Laboratory's Directed Energy and Space Vehicles Directorates



Ms. DeRaad leads AFRL's La Luz Academy, University Outreach programs, Technology Transfer program, Small Business Innovation Research programs, and the Phillips Technology Institute located at Kirtland AFB.

Having earned a B.S. and M.S. in electrical engineering from the University of New Mexico in 1985 and 1992 respectively, she is a 25-year employee of the Air

Force. Among many other awards and honors achieved at the Laboratory, Ms. DeRaad received the 2008 Air Force Distinguished EEO Award (Hispanic Employment Award), one of the Air Force's most prestigious awards.

Ms. DeRaad will provide materials regarding AFRL's Technology Transfer Support Group at the luncheon.

We meet the 3rd Tuesday of each month at **Tanoan Country Club** (Rolling Hills entrance east of Eubank off Academy). Registration begins at 11:30 a.m. followed by lunch at noon. Members are admitted free and the guest fee is \$15.

To RSVP, register online at www.pacanm.org. Include your name, guest's name, and menu selection. Please RSVP by noon on the Friday before the week of the meeting. •

President's Corner *By Bill Miera*

It has been an honor to serve PACA as the 2011-12 President and a pleasure to emcee PACA's Silver Anniversary of the BFI. I enjoyed hearing the astronauts' stories but enjoyed even more contributing \$20,000 to our New Mexico universities to help promote the education of science, technology, and engineering.

We had many top notch speakers at the monthly luncheons and most importantly lots of effective networking all year long. Sadly, we lost some great friends of PACA during the year, but overall we had as excellent year due to the awesome Board and Committee Chairs that I had the honor to work with. Also thanks to the many volunteers who make PACA run smooth year after year. A special thanks to **Becky Mullins** who coordinated the monthly Board lunches as well as the monthly member luncheon meetings. I feel very comfortable turning over the reins to **Patricia Knighten** who will become President in April. She has already jumped in as Vice-President and done a great job.

It is a pleasure to introduce new Board Members that I have appointed due to vacancies. It required two people to replace Dick Trask as Program Officer — **Don Nash** will be the Board member with **Stuart Purviance** supporting him. Taking over as Small Business Officer is **Shirley Bailey** with support from **Lenny Bean**. Thanks to them for volunteering to help our organization.

Don't forget to attend the March 20 luncheon at Tanoan Country Club when we will conduct our annual Board elections. We are already planning the next BFI and expect to have a great year for PACA under Patricia's skillful leadership. Thank you for the opportunity to lead and I wish all members a successful year. •

Save the Date for the 2012 BFI

The 26th Briefing for Industry will be held August 20-22, 2012 at the Hotel Albuquerque in Old Town. All PACA members are encouraged to attend this premier event to learn about government contracting opportunities in the coming year.

Check the PACA website regularly to learn of keynote speakers and program updates at <http://bfi.pacanm.org>. •

Legal Insights: Coping with Government Budget Cuts, Part II

By Ross Crown

The first part of this article, appearing in the Fall 2011 issue of the PACA Pulse, noted that reductions in discretionary spending by the federal government are on the way and that these cuts are expected to hit the Department of Defense the hardest. Contractors need to be ready for reductions in spending. While many of these reductions will result simply in fewer contracts being awarded, existing contracts may also be affected.

This article addresses the government's rights and obligations under those contract provisions that may be used to implement budget cuts, and contractors' rights and obligations in responding to government action under these contract provisions. The first part of the article discussed government action pursuant to provisions concerning contract funding, contract payments, and government delay of work. This second part addresses government action under contract provisions concerning government orders to stop work, contract changes, and termination.

Government Orders to Stop Work

Action by the government to narrow the scope of or terminate a contract may begin with an order to stop work. FAR 52.242-15 incorporates the Stop-Work Order clause. Under this provision, the contracting officer may, at any time, by written order to the contractor require that the contractor stop all or any part of the contract work. Work may be stopped for a period of 90 days and for any such further period to which the parties may agree.

The Stop-Work Order clause provides that upon receipt of an order stopping work, the contractor is to immediately comply and take all reasonable steps to minimize the incurrence of costs allocable to the work stopped. Within the 90 day period or any agreed extension period, the contracting officer shall either cancel the stop-work order or terminate the work covered by the order either for default or for the convenience of the government.

If the stop-work order is cancelled or the 90 day period or any extension period expires, the contractor is to resume work. Moreover, the contracting officer is required to make an equitable adjustment to the delivery schedule or contract price or both if the stop-work order results in an increase in the time required or costs allocable to contract performance. To preserve its right to such an equitable adjustment, the contractor must assert a request for an adjustment within 30 days after the period of work stoppage. If the contractor fails to timely assert a right to adjustment and if the contracting officer decides the facts justify the action, the contracting officer may act on a proposal submitted at any time before final payment.

Stop-work orders are intended to be used when required for reasons such as an advancement in the state of the art, production or engineering breakthroughs, or realignment of programs. They are not to be used in place of a termination notice after a decision to terminate has been made. FAR 42.1303.

Contract Changes

The scope of a contract can be narrowed through changes. Contract changes are of two types. An actual change occurs when the contracting officer issues a written order pursuant to a Changes clause incorporated into the contract. A constructive change arises when the contractor is forced to change its performance of its contract without receiving a written change order.

The key consideration for a contractor faced with a change is to preserve a claim for costs resulting from that change. A contractor must give notice to the government if it intends to seek compensation for a change. Where a change is ordered under a Changes clause, these clauses typically require that after receipt of the change order, the contractor has a certain period of time (usually 30 days) within which it must assert its right to an equitable adjustment.

See, e.g., the Changes clauses in FAR 52.243-1, 52.243-2 and 52.243-3. Where a constructive change occurs, the contractor should give notice of any increase in cost or time of performance as soon as possible after it receives any written or oral order (including directions, instructions, interpretations or determinations) from the contracting officer that causes a change.

The required contents of a notice will vary depending on the particular Changes clause incorporated into the contract, but generally notice should include the identity of the individual requesting the change, the nature of the change, and a description of the additional work required by the change. Case authority recognizes exceptions to the notice requirement where (1) the responsible government officials are aware, or should be aware of the facts giving rise to the claim; (2) the government has actual knowledge of the facts underlying the contractor's claim (unless the government can establish it was prejudiced by the absence of formal notice); or (3) the contracting officer decides the contractor's claim on the merits.

Compensation for changes is subject to the availability of funds. A contracting officer is not to execute a contract modification that causes or will cause an increase in funds without having first obtained a certification of funds availability. This requirement does not apply to modifications to contracts that are conditioned on availability of funds or contain a limitation of costs or funds clause. FAR 43.105.

Terminations

The most direct method for the government to impose budget cuts on an existing contract is to terminate the contract in whole or in part. Terminations may be for the convenience



continued on following page

of the government or for default on the part of the contractor.

The government's right to terminate for convenience is broad. It requires only a determination by the contracting officer that a termination is in the government's interest. See, e.g., FAR 52.249-2 Termination for Convenience of the Government (Fixed-Price). See also FAR 54.249-6 Termination (Cost-Reimbursement).

Generally, such as under these clauses, after a termination for convenience is declared, the contractor is to submit a final termination settlement proposal to the contracting officer. This proposal is to be delivered promptly but no later than one year from the effective date of termination. If the contractor and contracting officer cannot agree on an amount to be paid as a result of the termination, the contracting officer is typically required to pay the following amounts:

- Contract price or reimbursable costs (as applicable) for completed supplies or services accepted by the government and not previously paid for.
- Costs incurred in performance of the work terminated.
- Cost of settling terminated subcontracts.
- Profit or fee on costs incurred in performance of the work terminated.
- Reasonable cost of settlement of work terminated.

Many of the same reductions in scope can be achieved by the government through use of either the Termination for Convenience clause or the Changes clause. Both provisions provide a mechanism for the deletion of contract work. When major portions of contract work are deleted, however, the Termination of Convenience clause is to be used where no additional work is substituted in its place. *Appeal of Dollar Roofing*, ASBCA No. 36461, 92-1 BCA ¶ 24,695 (December 24, 1991).

The government may also terminate a contract for default. A default results from the contractor's actual or anticipated failure to perform its contractual obligations and includes failure to make progress in the work so as to endanger performance. See, e.g., FAR 49.401 and 52.249-6.

If a termination for default appears appropriate, the contracting officer should, if practicable, notify the contractor in writing of the possibility of termination. The notice should request the contractor to show cause why the contract should not be terminated for default. See, e.g., FAR 49.401, 49.402-2 and 52.249.6

If after sending a show cause notice, the contracting officer determines that a termination for default is proper, he or she shall issue a notice of termination. The government may then proceed with a termination for default where the contractor fails to cure the default within 10 days (or such extended time as may be granted by the contracting officer) after receiving the notice of termination. FAR 49.401 and 49.402-3.

In the event of a termination for default, a contractor is generally entitled to payment of the contract price for completed work. The defaulted contractor is, however, liable for amounts due to the government as a result of the default. See, e.g.,

FAR 49.402-2.

A contractor who has been terminated by default has the right to convert the termination for default into a termination for convenience. To do so, the contractor must establish that it was not in default or that its failure to perform is excusable. FAR 49.401 and 52.249-6. This may be an increasingly common process if the government is compelled by budget cuts to declare terminations for default too hastily.

A Final Word . . . Be Prepared

As this article demonstrates, the government has a variety of tools for defunding, suspending, narrowing, or abandoning contracts in response to budget cuts. At the same time, contractors have methods available to them for limiting the impact of these measures on their own bottom lines. When the budget ax falls, contractors must protect themselves by responding quickly and knowledgeably. •

Ross is a partner in the Albuquerque office of Lewis and Roca LLP. This article is intended for general information only and should not be construed as legal advice or opinion. Any questions concerning your legal rights or obligations in any particular circumstance should be directed to your lawyer.

Membership Renewal is Due

PACA annual dues of \$150* are due now. The fiscal year runs from April 1, 2010 to March 31, 2011. You should have received a "dues due" e-mail reminder from PACA Treasurer John Kiegel. Mid-year applications will be pro-rated. You may pay your dues and apply on-line at www.pacanm.org.

For more information, contact Maran Vedamanikam, (Membership Chair), 797-3042 / maran@euroclydon.com. •

* Dues are subject to change.



Five years ago, at the suggestion of our then president, Dar Johnson, PACA launched the PACA Pulse with our Winter 2007 issue. Since then readers have been kept up-to-date on organizational news, industry developments, and members' companies.

It requires the involvement of the entire membership to make for a successful and beneficial newsletter. A heartfelt "Thank You" is extended to all contributors. And to those of you who have not yet contributed to your newsletter, please consider doing so. Any original article or announcement relevant to the membership is welcome. Please submit your items to our editor, Ross Crown, at RCrown@LRLaw.com or call him at 764-5402. •

Joint Technology Associations' Gathering a Success

By Patricia Knighten

On December 15, 2011, PACA and seven other business associations co-hosted a networking social event to advance science and technology cooperation in New Mexico. The gathering was organized as a result of the first New Mexico Science and Technology Business Associations' summit convened on June 2, 2011 in Albuquerque by the New Mexico Economic Development Department. The group agreed on some key actions to foster collaboration between technology associations, and moved forward on hosting an in-person joint networking event for association members.

The associations share the belief that with its rich science and technology assets, New Mexico is poised to become a nationally recognized hub of excellence in technology research, commercialization, and entrepreneurship. In addition to PACA, the organizations that participated in and sponsored the event included:

- High Tech Consortium of Southern New Mexico (HTC)
- Micro and Nanotechnology Commercialization Education Foundation (MANCEF)
- New Mexico Biotechnology and Biomedical Association (NM Bio)
- New Mexico Optics Industry Association (nmOptics)
- New Mexico Technology Council (NMTC)
- Energy, Technology and Environmental Business Association (ETEBA)

Over 130 people representing the above organizations above as well as individuals from academia, government research, economic development, and other business associations attended the event to "Advance Science and Technology Cooperation in New Mexico." Bill Miera, PACA President, and Lisa Adkins, Chairwoman of the New Mexico Tech Council, took the lead in a celebratory cake cutting to commemorate the collaboration among New Mexico's Science and Technology Business Associations.

If a room filled with people, and continuous and enthusiastic chatter for over three hours is a metric for networking success, then we did it! •



2012 Legislative Session Report

By M. Brian Barnett, PACA Legislative Liaison

The following bills affecting veterans were signed by the Governor during the 2012 regular session:



HB 131 – **Income Tax Contribution to Veterans' Fund** (sponsored by Yvette Herrell)

HB 178 – **Drivers License Contributions to Veterans** (sponsored by Yvette Herrell)

SB 369 – **Veteran Services Department Definitions** (sponsored by William F. Burt) •

PACA Luncheon Sponsorship Opportunities

PACA members may sponsor a luncheon and receive recognition for doing so. Three levels of sponsorship are available. Sponsorship provides an excellent opportunity to showcase your business.

If you are interested in taking advantage of this program, contact Maran Vedamanikam at 797-3042 or Ro Saavedra at 830-2345. •

Welcome NEW Members

Shirley Bailey

Procurement Strategies

Nancy Barkell

Aero Federal Credit Union

Rose Hardenburger

Rose M Hardenburger LLC
Peoria, Arizona

Dave Patton

Spectrum

Wayne White

SpaceBooster LLC



FAR Records Retention Requirements

By Tony Royle, CPA

The FAR prescribes records retention requirements. Government contractor audits will always require research into past records, making it critical to understand and closely follow the rules on records retention.

Overview of FAR 4.703

1. Contractors need to maintain books, documents, accounting procedures and practices, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies for three years after the final payment or according to the table below.

2. Contractors shall keep these records for a longer period of time if such time is in the contract clause or the contractor retains records longer for its own purposes. Also, if the contractor does not meet the original due date for submission of final indirect cost rate proposals, the retention periods shall be automatically extended one day for each day the proposal is not submitted after the original due date.

3. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:

- A reliable imaging process that captures all the information;

- An efficient indexing system for these images; and
- Maintenance of the original documents for one year after creating images of them.

4. Maintaining any of these records on a computer is acceptable so long as they can be restored in the time periods prescribed.

General Notes on How to Calculate Retention Times

1. The retention periods below are calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor's fiscal year in which the final entry is made.

2. When records generated during a prior contract are relied upon by a contractor for cost or pricing data in negotiating a succeeding contract, the prescribed periods shall run from the date of the succeeding contract.

3. If two or more of the record categories described below are interfiled and separating them is impractical, the contractor shall retain the entire record series for the longest period prescribed for any category in that group.

Records Retention Times (in years)

I. Financial and Cost Accounting Records (FAR 4.705-1)

A/R Invoices, Adjustments to Accounts, Invoice Registers, Freight Bills, Shipping Orders ...	4
Material, Work, and Service Order files	4
Cash Advance Recapitulations	4
Paid, canceled, and voided checks for other than payment of salary and wages	4
A/P records	4
Labor Cost Distribution Cards	2
Detailed Petty Cash records	2

II. Pay Administration Records (FAR 4.705-2)

Payroll sheets for each employee for each period of contract	4
Time and Attendance Cards	2
Employee checks	2

III. Acquisition and Supply Records (FAR 4.705-3)

Requisitions for materials, supplies, equipment, and services	2
Maintenance and Other Service Work Orders	4
Equipment records	4
Expendable Property records	4
Receiving and Inspection Reports	4
Purchase Order Files for equipment, material, or services used in a contract	4
Records of Quality Control, Reliability and Inspection	4

Tony Royle is a partner in the Albuquerque office of the public accounting firm of Moss Adams LLP. He specializes in services to government contractors. For further information, Tony can be reached at 878-7210.